

Hon. Philip H. Brandt
Chapter 7
Hearing Date: May 30, 2007
Hearing Time: 9:30 a.m.
Response Date: May 22, 2007
Location: United States Federal Courthouse
1717 Pacific Avenue, Courtroom I
Tacoma, WA.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re:) Case No. 07-41321-PHB
DANIEL P. WICK AND NANCY M. WICK,)
Debtors.) DECLARATION OF DAVID K. JOHNSON
IN SUPPORT OF MOTION FOR RELIEF
FROM STAY AND MEMORANDUM IN
SUPPORT THEREOF

David K. Johnson declares as follows:

1. I am the President and CEO of Westsound Bank. I am familiar with the loan made to Daniel Wick and Nancy Wick d/b/a Wick Construction. I have personal knowledge of the facts set forth herein and I am competent to testify thereto.

2. On or about January 18, 2006, Daniel Wick and Nancy Wick d/b/a Wick Construction, agreed to borrow \$150,000 from Westsound Bank to purchase the certain real property located at 191 E. Clonakilty Dr., Shelton, Mason County, Washington (the "Clonakilty Property") and to construct a single family residence thereon (the

DECLARATION OF D. JOHNSON IN SUPPORT OF
WESTSOUND'S MOTION FOR RELIEF FROM STAY 1

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1 "Construction Loan"). A true and correct copy of the Promissory Note is attached as
2 Exhibit A and incorporated herein.

3 3. On the same date the Wicks executed and delivered a Deed of Trust to
4 Westsound Bank securing the note. The Deed of Trust was filed with the Mason County
5 Auditor's office on January 18, 2006 under Auditor's No. 1858701. A true and correct
6 copy of the Deed of Trust is attached as Exhibit B and incorporated herein.

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8 4. After the finalization of the loan, the Wicks and Wick Construction made
9 periodic draw requests to Westsound Bank and those were funded by Westsound. In
10 September, 2006, however, Westsound Bank discovered that the Wicks and Wick
11 Construction had made a draw request to pay obligations to Evergreen Lumber Company,
12 but that after Westsound Bank funded that request, the Wicks used the funds for personal
13 reasons rather than to fund the construction on the Clonakilty Property. Westsound Bank
14 reviewed the checks drawn on the Wick Construction account and confirmed that checks
15 had been made out to cover the Wicks' personal expenses such as their credit cards,
16 entertainment and other expenses. True and correct copies of those checks are attached
17 as Exhibit C and incorporated herein. The funds were not used to pay the supplier,
18 Evergreen Lumber Supply. Mr. Wick was confronted with this information and he
19 confirmed that he and his wife had used the funds advanced under the construction loan
20 for personal expenses. Westsound Bank ordered the Wick Construction account frozen
21 and stopped making advances. No advances have been made since September, 2006.
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24 5. Although the Bank has offset a small amount which remained in a Wick
25 Construction checking account against the outstanding obligation, no other payments
26 have been made on the loan since September, 2006.
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DECLARATION OF D. JOHNSON IN SUPPORT OF
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1 6. So far as is known no additional construction has been done on the
2 Clonakilty Property and the project remains uncompleted. At the time of the discovery of
3 the misappropriation of loan proceeds and the termination of the loan, the project was
4 only at the framing stage. The debtors, in their Schedules and Statements of Financial
5 Affairs, Schedule A, has represented that it would cost \$65,000.00 to complete
6 construction.

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8 7. As part of a non-judicial foreclosure Westsound Bank served the Wicks
9 with a Notice of Default on March 28, 2007, and the Bank was prepared to serve the
10 Wicks with a Notice of Foreclosure and Notice of Trustee's Sale at the time of the filing
11 of this bankruptcy. That sale would have been scheduled for August 10, 2007.

12 8. As of April 30, 2007, the amount owing to Westsound Bank relative to the
13 Clonakilty Property was \$113,056.18, consisting of a principal debt of \$101,232.40,
14 interest as of April 30, 2007, of \$5,177.15 (and continuing to accrue at the rate of \$49.92
15 per day) and \$6,646.63 in attorney's fees, costs, late charges and other statutory costs
16 associated with the non-judicial foreclosure.

17
18 9. As part of the non-judicial foreclosure, Westsound Bank requested a
19 Trustee's Guaranty from Mason County Title. That title report showed that in addition
20 to the amounts owing to Westsound Bank, two parties have filed materialmen's liens
21 against the Clonakilty Property., Evergreen Lumber Company for \$17,336.30 and Paul
22 Jones Construction for \$3,000.00. A true and correct copy of the Trustee's Guaranty is
23 attached as Exhibit D and incorporated herein. There are also unpaid taxes for 2006 and
24 2007 totaling \$276.66 and fees associated with a homeowners' association.
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1 10. Based on the Mason County Assessor's website, the assessed value of the
2 Clonakilty Property is \$10,000.00.

3 11. Prior to construction Westsound Bank had the Clonakilty Property
4 appraised. The expected appraised value of the completed project was \$188,000.00. A
5 true and correct copy of the Appraisal is attached as Exhibit E and incorporated herein.

6 12. On February 23, 2006, the Daniel Wick entered into a separate loan
7 agreement with Westsound Bank in which he borrowed \$280,000.00 (the "Soderberg
8 Loan"). A true and correct copy of the February 23, 2006 promissory note is attached as
9 Exhibit F and incorporated herein. To secure the note the Wicks granted Westsound
10 Bank a deed of trust in certain real property located at 780 E. Soderberg Road, Allyn,
11 Washington. The abbreviated legal description for the property is Lot eleven (11)
12 Lakeland Village No. 12 Phase 2, Vol. 10 of Plats, pages 246 to 250, both inclusive of
13 Mason County, Washington, parcel no. 122185000011. Westsound Bank filed the Deed
14 of Trust with the Mason County Auditor on February 28, 2006, under File No. 1861680
15 and holds a first position on the Soderberg Road property. A true and correct copy of the
16 Deed of Trust for the Soderberg Property is attached as Exhibit G and incorporated
17 herein.
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20 13. On March 7, 2006, Westsound Bank sold the Soderberg Loan to
21 Countrywide Home Loan ("CHL"). Based on information provided by CHL, the Wicks
22 made the monthly payments on the Soderberg Loan in April and May, 2006, but failed to
23 make any payments thereafter.
24

25 14. Westsound Bank repurchased the loan from CHL on September 14, 2006
26 and commenced a non-judicial foreclosure. The trustee's sale was scheduled to occur on
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1 Friday, April 27, 2007. The sale did not proceed after it was learned that the Wicks had
2 filed bankruptcy on April 26.

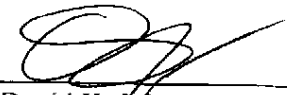
3 15. At the time of the filing of this bankruptcy the total debt owing to
4 Westsound Bank on the Soderberg Loan was \$287,495.99. Interest continues to accrue at
5 the rate of \$52.76 per day. In addition to the amounts owing to Westsound, real estate
6 taxes have not been paid since the first half of 2006 and, based on the Mason County
7 Assessor's website, taxes totaling \$4,148.56 are owed.
8

9 16. The Mason County Auditor shows an assessed value of the property of
10 \$295,930.00.

11 17. The Construction Loan and the Soderberg Loan are not cross-
12 collateralized.

13 I declare under penalty of perjury under the laws of the State of Washington that
14 the foregoing is true and correct to the best of my knowledge.
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16 Executed this 2nd day of May, 2007, at Bremerton, Washington.

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19 David K. Johnson

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28 DECLARATION OF D. JOHNSON IN SUPPORT OF
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